

THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

\* \* \* \* \*

UNITED STATES OF AMERICA \* NO. H-14-CR-250  
\* Houston, Texas  
VS. \*  
\* 3:05 p.m. - 3:37 p.m.  
PHILIP JOSEPH RIVKIN \* June 23, 2014

\* \* \* \* \*

**DETENTION HEARING/ARRAIGNMENT  
(Volume 1 of 2)**

BEFORE THE HONORABLE MARY MILLOY  
UNITED STATES MAGISTRATE JUDGE

\* \* \* \* \*

Proceedings recorded by electronic sound recording  
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1 **APPEARANCES:**

2 For the United States:

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4 **Environmental Crimes Section**  
4 **U.S. Department of Justice**  
5 P.O. Box 7611  
5 Ben Franklin Station  
5 Washington, D.C. 20044-7611

6 For the Defendant:

7 MS. LINDSAY A. BELLINGER  
8 **Federal Public Defender's Office**  
8 440 Louisiana, Suite 1350  
9 Houston, Texas 77002

10 Pretrial Services Office:

11 DAVID HERNANDEZ

12 Court Clerk:

13 CYNTHIA JANTOWSKI

14 Electronic Recorder:

15 PAUL YEBERNETSKY

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## PROCEEDINGS

3:05 P.M. - JUNE 23, 2014

10 MS. BELLINGER: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. BELLINGER: I have reviewed the Indictment  
13 for Mr. Rivkin. He's prepared to plead not guilty and  
14 he would waive formal reading of the Indictment and  
15 would like to proceed with a Detention Hearing.

16 THE COURT: Okay. Have you had a chance to  
17 read the Pretrial Services Report?

18 MS. BELLINGER: Yes, I have, Your Honor.

19 THE COURT: Anything in there that you can  
20 contend is an error of fact?

21 MS. BELLINGER: No, not to my knowledge, Your  
22 Honor.

23 THE COURT: All right. Anything, Ms. Lehnert,  
24 that you contend is an error of fact?

25 MS. LEHNERT: Yes, Your Honor.

1                   THE COURT: Okay, what's that?

2                   MS. LEHNERT: The address that's listed under  
3 the defendant's name, we believe, is an error.

4                   THE COURT: Okay. And what's his address?

5                   MS. LEHNERT: We actually don't know. We've  
6 checked out this address, and as the agent will be  
7 able to testify, Your Honor, it does not belong to  
8 Mr. Rivkin.

9                   THE COURT: All right, well, I'll listen to  
10 that testimony.

11                  All right, other than that, I'll take as  
12 true those matters set out in the Pretrial Services  
13 Report.

14                  Do you have a witness, Ms. Lehnert, on the  
15 question of pretrial detention?

16                  MS. LEHNERT: Yes, I do, Your Honor.

17                  THE COURT: All right, call your first witness.

18                  MS. LEHNERT: The United States calls Michael  
19 Lombard.

20                  THE COURT: Lombard?

21                  MS. LEHNERT: Lombard.

22                  THE COURT: Okay, Lombard. Come forward, sir.

23                  MS. LEHNERT: Your Honor, is it okay if I  
24 sit --

25                  THE COURT: Not really. Oh, you can sit for

Agent Michael Lombard - Direct by Ms. Lehnert

6

1 questioning.

2 ***[Oath administered by clerk]***

3 **AGENT MICHEAL LOMBARD, CALLED BY GOVERNMENT**

4 **DIRECT EXAMINATION**

5 **BY MS. LEHNERT:**

6 Q. Agent Lombard, would you please state your full for  
7 the record?

8 A. Michael Lombard.

9 Q. And what is your position?

10 A. I am a Special Agent employed by the United States  
11 Secret Service here in Houston, Texas, currently  
12 assigned to the Houston Area Fraud Task Force.

13 Q. How long have you held that position?

14 A. Six years.

15 Q. And what sort of training have you had as Special  
16 Agent for the Secret Service?

17 A. I attended the Federal Law Enforcement Training  
18 Center in Glynco, Georgia, as well as the U.S. Secret  
19 Service Academy in Beltsville, Maryland.

20 Q. And what sorts of crime do you investigate as part  
21 of the Houston Fraud Task Force?

22 A. Mail fraud, wire fraud, money laundering, access  
23 device fraud, all things fraud.

24 Q. Do you know Philip Joseph Rivkin?

25 A. I do.

Agent Michael Lombard - Direct by Ms. Lehnert

7

1 Q. And do you see him in the courtroom today?

2 A. Yes.

3 Q. Would you identify him, please, for the record?

4 A. He's the gentleman in the orange jumpsuit.

5 Q. And how is it that you know that to be Philip  
6 Rivkin?

7 A. Through a case that several of my co-workers and my  
8 squad was investigating.

9 Q. And in general terms, what was the nature of that  
10 case?

11 A. It involved fraud -- mail fraud, wire fraud, money  
12 laundering. And the source, I guess would be the best  
13 way to put it, would be selling of biodiesel to various  
14 companies and to obtain tax credits.

15 Q. When did you first encounter Mr. Rivkin?

16 A. Personally in Guatemala last Wednesday.

17 Q. Would that be June 18th?

18 A. Yes.

19 Q. And how did you happen to be in Guatemala on June  
20 18th of 2014?

21 A. I flew down to conduct a surveillance on Mr. Rivkin  
22 for his expulsion from Guatemala and subsequent return  
23 flight to the United States.

24 Q. And prior to going down there, down to Guatemala,  
25 had you familiarized yourself with any documentation

Agent Michael Lombard - Direct by Ms. Lehnert

8

1 related to Mr. Rivkin?

2 A. Yes. I went over some documentation provided by --  
3 provided by the Guatemalan authorities.

4 MS. LEHNERT: Your Honor, I have a couple of  
5 exhibits I'd like to show the witness. May I approach?

6 THE COURT: All right.

7 **[Pause]**

8 BY MS. LEHNERT:

9 Q. Agent Lombard, do you recognize these documents  
10 that have been marked as Government's Exhibit 1 and  
11 Exhibit 2?

12 A. Yes, I do.

13 Q. And what are they?

14 A. They are screen shots of the Guatemalan Civil  
15 Registry.

16 Q. And what is your understanding of what those  
17 documents show?

18 A. Right here on Exhibit 1 it shows Philip Rivkin, how  
19 he has changed his last name to Poitan Arriaga. And  
20 then on Exhibit 2 it is actually Mr. Rivkin purporting  
21 to be a Guatemalan citizen by the name of Felipe Poitan  
22 Arriaga.

23 Q. And with respect to Exhibit No. 1, what's the date  
24 on that?

25 A. February 23, 2012.

Agent Michael Lombard - Direct by Ms. Lehnert

9

1 Q. And with Exhibit 2, what is the date on that  
2 exhibit?

3 A. October 5, 2012.

4 Q. And again, you got these exhibits from where --  
5 these documents, excuse me?

6 A. Guatemalan authorities.

7 Q. And how did those come -- how did the Guatemalan  
8 authorities happen to get these documents to you?

9 A. Via email.

10 Q. And were you working with any other agents in  
11 conjunction with securing these documents?

12 A. Yes, the Department of Homeland Security actually  
13 has a legal attache office down there, so we were  
14 working with Homeland Security Investigations.

15 Q. So, based on these documents, did you understand  
16 that Mr. Rivkin was going to be expelled from  
17 Guatemala?

18 A. Yes, I did.

19 Q. And based on that understanding, did you then go to  
20 Guatemala on June 18, 2014?

21 A. Yes.

22 Q. Did you arrest Mr. Rivkin in Guatemala?

23 A. No.

24 Q. What did you do while you were in Guatemala?

25 A. Specifically, I ate lunch, used the restroom and

Agent Michael Lombard - Direct by Ms. Lehnert

10

1 got on an airplane back to the United States.

2 Q. And what was Mr. Rivkin doing during this time?

3 A. Waiting for the flight back to the United States.

4 Q. And did Mr. Rivkin get on the flight that you were  
5 on?

6 A. Yes.

7 Q. And what did you do on that flight back to the  
8 United States?

9 A. Watched my iPad.

10 Q. Was Mr. Rivkin on the plane with you?

11 A. Yes, he was.

12 Q. Was he in custody during that time?

13 A. No.

14 Q. When you landed in Houston, what happened to  
15 Mr. Rivkin at that time?

16 A. He was taken into custody by authorities.

17 Q. Who took him into custody?

18 A. U.S. Secret Service Agents, CVP, Customs and Border  
19 Protection, as well, which pretty much facilitated the  
20 Secret Service Agents getting through the security at  
21 the airport.

22 Q. After Mr. Rivkin was taken into custody, what  
23 happened to him?

24 A. He was read his rights and brought to a Federal  
25 Detention Center.

Agent Michael Lombard - Direct by Ms. Lehnert

11

1 Q. And was he processed at the Secret Service Office?

2 A. Oh, yes, he was, he was fingerprinted.

3 Q. And what did those fingerprinting results show?

4 A. It was, in fact, Philip Rivkin.

5 Q. And that was based on what?

6 A. An AFIS hit. His fingerprints.

7 Q. And as a part of taking Mr. Rivkin into custody,  
8 were his personal belongings collected by the Secret  
9 Service?

10 A. Yes, they were.

11 MS. LEHNERT: Your Honor, if I may approach  
12 the witness again?

13 THE COURT: Yes.

14 BY MS. LEHNERT:

15 Q. Agent Lombard, if I could have you take a look at  
16 what's been marked as Government's Exhibit 3. Do you  
17 recognize that document?

18 A. Yes, I do.

19 Q. And what is it?

20 A. The Expulsion Order from the Guatemalan Government  
21 to Mr. Rivkin.

22 Q. And based on the language in the Expulsion Order,  
23 what is your understanding of why Mr. Rivkin was being  
24 expelled from Guatemala?

25 A. For breaking the law to obtain his Guatemalan

Agent Michael Lombard - Direct by Ms. Lehnert

12

1 citizenship. So immigration problems.

2 Q. Referring you back to Exhibits 1 and 2, is there an  
3 identification number on Exhibits 1 and 2?

4 A. Yes.

5 Q. And do those -- how do those identification numbers  
6 compare?

7 A. They match up.

8 Q. When Mr. Rivkin was taken into custody at IAH on  
9 June 18th, is it your understanding that there was an  
10 arrest warrant for him at that time?

11 A. Yes.

12 Q. And what was the nature of the case that was being  
13 charged in the arrest warrant?

14 A. Mail fraud.

15 Q. And is it your understanding that an Indictment has  
16 now been returned against Mr. Rivkin?

17 A. Yes.

18 Q. And what is your understanding of the nature of the  
19 charges against Mr. Rivkin?

20 A. Mail fraud, wire fraud, money laundering.

21 Q. There are also charges related to EPA statutes?

22 A. Yes, Clean Air Act violations.

23 Q. What is your understanding of Mr. Rivkin's business  
24 when he was in Houston?

25 A. Mr. Rivkin would purport to make biodiesel and, in

Agent Michael Lombard - Direct by Ms. Lehnert

13

1 doing so, would be able to obtain RINS, which is a  
2 credit basically assigned to the biodiesel. He would  
3 sell those credits to energy providers and he would  
4 also get the tax credits from making the biodiesel from  
5 the Federal Government.

6 Q. And did he actually make any biodiesel?

7 A. No.

8 Q. And were employees of his facility and engineers at  
9 his facility interviewed in order to confirm that no  
10 biodiesel was made?

11 A. Yes.

12 Q. During the course of the investigation, were EPA  
13 documents reviewed in order to determine what he had  
14 submitted to EPA and whether there was false  
15 information there?

16 A. Yes.

17 Q. And again, was there any indication that he had  
18 actually produced any biodiesel?

19 A. In the documents Mr. Rivkin submitted or in what we  
20 learned throughout our investigation?

21 Q. What you learned throughout your investigation.

22 A. Mr. Rivkin did not make biodiesel.

23 Q. Did he submit documents to EPA suggesting that he  
24 did?

25 A. Yes.

Agent Michael Lombard - Direct by Ms. Lehnert

14

1 Q. Did you also communicate or interview any of the  
2 purchasers of the RINs that Mr. Rivkin generated?

3 A. Yes.

4 Q. And did you determine that Mr. Rivkin had, in  
5 fact, sold these credits to a number of different  
6 entities?

7 A. Yes.

8 Q. And based on your investigation, what is your  
9 understanding of how much money Mr. Rivkin made from  
10 selling these credits?

11 A. In excess of \$75 million, and that does not include  
12 the tax credit, which I believe was about approximately  
13 \$21 million from the Federal Government. So right  
14 around a hundred million, give or take.

15 Q. And all of this was based on biodiesel that  
16 Mr. Rivkin claimed to have produced?

17 A. Yes.

18 Q. But he did not, in fact, produce?

19 A. Correct.

20 Q. During the course of your investigation, did you  
21 determine where the \$75 million is?

22 A. It is outside of the U.S. Government's  
23 jurisdiction. So, for all intents and purposes, we  
24 tracked it as far as we could and it appears to be  
25 overseas.

Agent Michael Lombard - Direct by Ms. Lehnert

15

1 Q. Is it your understanding that EPA, as part of its  
2 investigation, conducted an inspection of Mr. Rivkin's  
3 biodiesel plant?

4 A. Yes, they did.

5 Q. Do you know when they did that?

6 A. If I remember correctly, it was approximately  
7 August of 2011.

8 Q. And at some time after that, did Mr. Rivkin move to  
9 Spain?

10 A. Yes, shortly thereafter.

11 Q. And who did he move with?

12 A. His wife and child.

13 Q. And since sometime after August 2011, when  
14 Mr. Rivkin moved to Spain, has he since moved back to  
15 the United States?

16 A. No.

17 Q. Do you have any understanding about when he went to  
18 Guatemala?

19 A. If you look at Exhibit 2 -- I'm sorry, Exhibit 1,  
20 I believe the date here is, so the beginning of 2012,  
21 February of 2012. At least, that is when he started to  
22 apply for Guatemalan citizenship.

23 Q. Based on what you've learned about Mr. Rivkin, has  
24 he traveled internationally?

25 A. Yes, extensively.

Agent Michael Lombard - Direct by Ms. Lehnert

16

1 Q. And what do you base that on?

2 A. Review of his U.S. passport records and then the  
3 passport records that the Guatemalan officials gave to  
4 us, as well.

5 Q. And is the travel with respect to the Guatemalan  
6 passport under the name of Philip Rivkin or is it under  
7 a different name?

8 A. Kind of to break it down, at the beginning of --  
9 the end of 2011, beginning of 2012, Mr. Rivkin was  
10 still traveling on his U.S. passport. And then at one  
11 point in time here he obtained citizenship in Guatemala  
12 under the name Felipe Poitan Arriaga. And then when  
13 you compare his Guatemalan travel on his -- I'm sorry,  
14 his travel under his Guatemalan passport, he  
15 exclusively uses that when traveling and his U.S.  
16 passport basically stops being utilized.

17 Q. At about what time was that?

18 A. Mid-2012. It kind of -- the U.S. one kind of  
19 dwindle down and then Guatemalan gets hot and heavy  
20 especially once the name is changed.

21 Q. Does Mr. Rivkin have any family in Houston at this  
22 time?

23 A. Not that I'm aware of.

24 Q. Does he own any property in Houston?

25 A. No.

Agent Michael Lombard - Direct by Ms. Lehnert

17

1 Q. Does his wife own any property in Houston?

2 A. No.

3 Q. Are you aware of an artwork collection belonging to  
4 Mr. Rivkin that was seized?

5 A. Yes, I am.

6 Q. And when was that artwork collection seized?

7 A. It was seized back in 2012.

8 Q. And where was it seized?

9 A. New Jersey.

10 Q. And where was it going?

11 A. It was going to Spain.

12 Q. What's the estimated value of the artwork that was  
13 seized?

14 A. 15 to 16 million dollars.

15 Q. Did Mr. Rivkin file any sort of claim with respect  
16 to the seizure of that artwork?

17 A. No, he did not.

18 Q. Based on your investigation, what is the name that  
19 you have come to learn that Mr. Rivkin travels under?

20 A. He travels under the name Felipe Poitan Arriaga.

21 MS. LEHNERT: Your Honor, I have nothing  
22 further at this time.

23 THE COURT: Ms. Bellinger?

24 MS. BELLINGER: May I proceed, Your Honor?

25 THE COURT: Yes.

## Agent Michael Lombard - Cross by Ms. Bellinger

18

## CROSS-EXAMINATION

BY MS. BELLINGER:

3 Q. Good afternoon, Agent Lombard.

4 A. Good afternoon.

5 Q. Are you the case agent in charge of this  
6 investigation?

7 A. I am an agent that assisted a little bit on the  
8 case.

9 Q. Okay. When did you begin investigating this case  
10 personally?

11 A. Well, personally, I didn't investigate it. I  
12 participated in several things. Probably 2011, 2012.  
13 It's been going on for a while, so --

14 Q. And who is the case agent in charge of this case?

15 A. Lea Bauer from the U.S. Secret Service.

16 Q. Okay. Have you prepared any reports in connection  
17 with this case?

18 A. I have not.

19 Q. And what information have you reviewed in order to  
20 prepare for your testimony today?

21 A. I've reviewed some bank records that were spread  
22 by other agents in my squad, the pivot tables. I've  
23 reviewed the Indictment, the Criminal Complaint, the  
24 seizure of the artwork, the documents provided to me by  
25 the Guatemalan Government through the Homeland Security

Agent Michael Lombard - Cross by Ms. Bellinger

19

1 investigator down there, and some documents, U.S.  
2 passport documents, to include border crossings.

3 Q. So, is all of the information that you testified to  
4 today regarding the wire fraud, mail fraud, and money  
5 laundering counts, as well as the false statement  
6 count, was all of that information obtained from the  
7 Indictment and Criminal Complaint in this case?

8 A. And through talking with agents involved in the  
9 case.

10 Q. Which agents did you speak with?

11 A. Lea Bauer and then Sarah Bullock.

12 MS. BELLINGER: Your Honor, at this time we  
13 believe that in order for the Court to properly assess  
14 the weight of the evidence in this case, pursuant to  
15 18 U.S.C. 3142(d)(2), we would need an agent with  
16 firsthand knowledge of the investigation in this case  
17 in order to determine the weight of the evidence with  
18 regards to detention.

19 THE COURT: I don't know whether Mr. Lombard  
20 has the information or not. You can ask him. I'm not  
21 sure you need the case agent if he spoke with the case  
22 agent. Hearsay is admissible.

23 MS. BELLINGER: Well, Your Honor, he --

24 THE COURT: So why don't you go ahead and ask  
25 him before we get to the case agent, okay?

## Agent Michael Lombard - Cross by Ms. Bellinger

20

1 Thank you, Ms. Bellinger.

2 || BY MS. BELLINGER:

3 Q. Have you reviewed any reports created by the  
4 agents, Lea Bauer and Sarah Bullock?

5 A. I reviewed -- again, like I said, I reviewed bank  
6 records that were put into spreadsheets.

7 Q. So you have not reviewed any reports in this case?

8 A. I'm not sure what you're asking by reports. I  
9 mean, we don't just sit there and generate reports.

10 Q. Okay.

11 A. In a fraud case, typically, what matters is the  
12 bank records.

13 Q. Okay. So you're saying that if Agent Lea Bauer and  
14 Agent Sarah Bullock prepared reports, either reports of  
15 interviews that they had conducted or other case  
16 related reports, that you haven't reviewed them?

17 A. I have talked to the agents.

18 MS. BELLINGER: May I have a moment, Your  
19 Honor?

20 THE COURT: Sure.

21 | *[Pause]*

22 MS. BELLINGER: Thank you, Your Honor.

23 | THE COURT: Okay.

24 BY MS. BELLINGER:

25 Q. Okay. To your knowledge, based on your testimony,

Agent Michael Lombard - Cross by Ms. Bellinger

21

1 no biodiesel was ever produced at the Green Diesel  
2 facility?

3 A. Correct.

4 Q. Do you know if any biodiesel was produced at any  
5 other facility owned by Mr. Rivkin or operated by one  
6 of his companies?

7 A. No.

8 Q. And how do you know that no biodiesel was ever  
9 produced?

10 A. Through speaking with the case agents who conducted  
11 the interviews.

12 Q. And who did the case agents interview to determine  
13 that no biodiesel was produced?

14 A. Employees.

15 Q. Do you have the names of the employees that they  
16 interviewed?

17 A. I do not.

18 Q. Who inspected the facility where the biodiesel was  
19 allegedly not produced?

20 A. The EPA.

21 Q. Okay. Have you inspected the facility?

22 A. I wouldn't -- no.

23 Q. Do you know if -- whomever inspected the facility,  
24 do you know if they encountered equipment that would be  
25 used to create biodiesel?

Agent Michael Lombard - Cross by Ms. Bellinger

22

1 A. No.

2 Q. They did not encounter the equipment or you are not  
3 certain?

4 A. I was not there to inspect the facility. I would  
5 defer that question to the EPA inspectors that  
6 inspected the facility.

7 MS. BELLINGER: Your Honor, I believe the  
8 answers to these two questions indicate that we would  
9 need another witness present to testify as to the  
10 weight of the evidence in this case.

11 THE COURT: Where is Mr. Bauer or Ms. Bauer  
12 or --

13 MS. LEHNERT: Your Honor, Ms. Bauer is here.

14 THE COURT: All right, let's hear from  
15 Ms. Bauer after you finish with Mr. -- are you finished  
16 with Mr. Lombard?

17 MS. BELLINGER: Well, if all the information  
18 obtained that Mr. Lombard would testify to was obtained  
19 from Ms. Bauer, then --

20 THE COURT: That's my understanding, that you  
21 would reviewed bank records?

22 THE WITNESS: Yes. Yes, ma'am.

23 THE COURT: But that Ms. Bauer is a lead  
24 agent; is that correct?

25 THE WITNESS: Correct. There are several lead

Agent Michael Lombard - Cross by Ms. Bellinger

23

1 agents.

2 THE COURT: Exactly.

3 I do have one question for you. How did  
4 you find out that Guatemala -- if you are the one who  
5 found out, that Guatemala was going to expel  
6 Mr. Rivkin?

7 THE WITNESS: The Homeland Security  
8 investigator down there actually was -- he's an  
9 Assistant Legal Attache and the Guatemalan had  
10 approached him because they were looking into  
11 Mr. Rivkin allegedly for some fraudulent business  
12 dealings.

13 THE COURT: In Guatemala?

14 THE WITNESS: Yes, ma'am. And the Guatemalan  
15 HSI -- well, the HSI Agent assigned to Guatemala  
16 conducted a Google search and found the artwork seizure  
17 in New Jersey, and that's kind of how --

18 THE COURT: Do you know anything about this  
19 art seizure or would Ms. Bauer know that, as well?

20 THE WITNESS: I know a little bit about it,  
21 but Ms. Bauer would know about it, too.

22 THE COURT: Okay, thank you.

23 MS. BELLINGER: And, Your Honor, I apologize.  
24 may I actually ask some additional --

25 THE COURT: Sure.

Agent Michael Lombard - Cross by Ms. Bellinger

24

1 MS. BELLINGER: -- questions about the  
2 Guatemala --

3 THE COURT: Sure.

4 MS. BELLINGER: Thank you.

5 BY MS. BELLINGER:

6 Q. Okay. Agent Lombard, do you know if Mr. Rivkin  
7 returned to the United States voluntarily or  
8 involuntarily at this time?

9 A. From?

10 Q. From Guatemala.

11 A. You would have to ask Mr. Rivkin that.

12 Q. Okay. So did --

13 A. He was expelled -- he was expelled from Guatemala,  
14 so --

15 Q. Did he --

16 A. -- I can't answer.

17 Q. To your knowledge, did he purchase a ticket back to  
18 the United States?

19 A. You would have to ask Mr. Rivkin that.

20 Q. Okay. To your knowledge, would he have been able  
21 to travel back to Spain?

22 A. Well, he's a U.S. citizen and has a U.S. passport,  
23 and the only passport that I was aware of was the  
24 fraudulent one, which reported him to be a Guatemalan  
25 citizen. So, based off of that, I would assume you

Agent Michael Lombard - Cross by Ms. Bellinger

25

1 would have to go back to the U.S., but --

2 Q. And is that because the Guatemalan Government  
3 deported him back to his country of origin?

4 A. He was expelled from Guatemala.

5 Q. Okay. So you have no knowledge as to whether or  
6 not the Guatemalan Government bought his ticket back to  
7 the United States or he bought it personally?

8 A. You would have to ask him.

9 Q. Okay. Did you speak with Mr. Rivkin at all during  
10 that flight?

11 A. No.

12 MS. BELLINGER: Nothing further, Your Honor.

13 MS. LEHNERT: Nothing further for this  
14 witness, Your Honor.

15 THE COURT: All right. You can step down,  
16 Mr. Lombard.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you.

19 You want to call Ms. Bauer?

20 MS. LEHNERT: Your Honor, I would like to make  
21 the Court aware of the fact that Ms. Bauer -- Agent  
22 Bauer was a witness in the Grand Jury and we did not  
23 anticipate calling her at today's hearing, and so there  
24 is at least a transcript that is not something I can  
25 provide to defense counsel at this time.

Agent Lea Bauer - Direct by Ms. Lehnert

26

1                   THE COURT: Well, I wouldn't expect you to and  
2 they're not going to ask you for it at this hearing.

3                   MS. BELLINGER: Well, Your Honor, depending  
4 on --

5                   THE COURT: Well, let's not get into the Grand  
6 Jury testimony. Let's just hear from Ms. Bauer on the  
7 3142(g), the weight of the evidence.

8                   Ms. Bauer, come forward.

9                   *[Oath administered by the case manager]*

10                  You want to question her first?

11                  MS. LEHNERT: Yes, please, briefly.

12                  THE COURT: Okay. Go ahead.

13                  **SPECIAL AGENT LEA BAUER, CALLED BY GOVERNMENT**

14                  **DIRECT EXAMINATION**

15                  **BY MS. LEHNERT:**

16 Q. Agent Bauer, could you state your name for the  
17 record.

18 A. Yes, my name is Lea Bauer. I am a Special Agent  
19 with the United States Secret Service. I have been  
20 with the Secret Service for 15 years.

21 Q. And during the course of your time with the Secret  
22 Service, did you have occasion to investigate  
23 Mr. Philip Joseph Rivkin?

24 A. Yes, I have.

25 Q. And during the course of that investigation, did

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1 you interview employees and engineers at the biodiesel  
2 facility that Mr. Rivkin came to operate?

3 A. Yes, myself and my partners.

4 Q. And who did you speak to at his facility?

5 A. Specifically a name, do you want me to --

6 Q. Yes.

7 A. It was a Mr. Khan, who was the actual plant  
8 manager, and a Mr. Harvey Greenwood, who was the  
9 engineer.

10 Q. And based on your interviews with those people, did  
11 you determine whether the facility operated?

12 A. Both of those individuals told us that the facility  
13 never operated. In fact, they had discussed this with  
14 Mr. Rivkin, that they were having problems getting it  
15 to operate. The electricity was not turned on and  
16 there was not steam available to actually make the  
17 plant operate.

18 Q. And subsequent to those discussions with Mr. --  
19 that those employees had with Mr. Rivkin, did  
20 Mr. Rivkin then submit paperwork to EPA claiming to  
21 produce biodiesel?

22 A. Yes, he did.

23 Q. And during the course of submitting paperwork to  
24 EPA, how many RINs did Mr. Rivkin claim to produce over  
25 the course of the years that he was submitting

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1 paperwork to EPA?

2 A. It was at least 30 million RINs, that he claimed to  
3 have made somewhere between 30 million and 60 million  
4 in our records.

5 Q. And based on your interviews, there was no  
6 biodiesel to support those RINs?

7 A. No, there was not.

8 Q. And based on your review of the bank records, the  
9 money that Mr. Rivkin received for selling those RINs  
10 went where?

11 A. The best that we could tell, there was a large  
12 amount of money that moved back and forth over a number  
13 of months and then left the country. It was very  
14 difficult to trace because there were a lot of  
15 intermediary wire companies used. But we have not been  
16 able to find any of that money in the United States.

17 Q. And the money that Mr. Rivkin received for the RINs  
18 came from where?

19 A. The majority of it came from the energy companies  
20 that purchased the invalid or fraudulent RINs. And  
21 then there was some portion of it that actually came  
22 from tax credits from the United States Government that  
23 were fraudulently applied for.

24 MS. LEHNERT: Nothing further, Your Honor.

25 THE COURT: Ms. Bellinger.

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1 MS. BELLINGER: May I proceed, Your Honor?

2 THE COURT: Yes, you may.

3 **CROSS-EXAMINATION**

4 **BY MS. BELLINGER:**

5 Q. Good afternoon, Agent Bauer.

6 A. Hi.

7 Q. In order to prepare for your testimony here today,  
8 did you review any reports that you prepared in this  
9 case?

10 A. I was not prepared to testify, so, no, I didn't do  
11 any specific review.

12 Q. Have you prepared any reports in this case?

13 A. I have prepared a few.

14 Q. What type of reports have you prepared?

15 A. Most of what I prepared have been interview  
16 reports.

17 Q. And how many witnesses have you interviewed in this  
18 case?

19 A. I have not participated in as many as some of my  
20 partners, but probably five or six.

21 Q. And have you also reviewed the interview reports of  
22 your partners?

23 A. Yes.

24 Q. And do you know how many total interviews were  
25 conducted?

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1 A. I'm sorry, I don't. It's a pretty large number.

2 Q. And out of the five or six interviews that you  
3 conducted, were any of those individuals employees  
4 working at the Green Diesel facility?

5 A. Yes, they all were.

6 Q. And do you have their names?

7 A. I'm trying to remember. I'm sorry, I didn't bring  
8 my notes with me and I don't remember specifically. I  
9 would have to review notes to know exactly who it was --  
10 who I participated in interviews with.

11 Q. Have you reviewed -- you indicated that you've  
12 reviewed other agents' reports of interviews. Have you  
13 also reviewed other agents' investigation reports in  
14 this case?

15 A. No.

16 Q. So, presumably, you've only reviewed other agents'  
17 interview reports and your own reports in this case?

18 A. Yes.

19 MS. BELLINGER: Your Honor, at this time we  
20 would move, pursuant to Federal Rule of Criminal  
21 Procedure 26.2, to review the witness interviews. And  
22 also, I believe, Your Honor, what I was indicating  
23 earlier, that pursuant to Rule 26.2(f)(3), also, this  
24 witness' statements to the Grand Jury would be  
25 something that we would be entitled to review prior to

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1 cross-examination.

2 THE COURT: I don't think you need her Grand  
3 Jury testimony at this point, and I'm not sure that  
4 those witness statements satisfy 26.2. So let's  
5 proceed, Ms. Bellinger.

6 Ms. Lehnert, do you have any of these  
7 witness interviews with you?

8 MS. LEHNERT: No, Your Honor. As you are  
9 aware, this is a preponderance of the evidence standard  
10 and hearsay is admissible.

11 THE COURT: Okay, let's go.

12 MS. BELLINGER: Well, Your Honor, I would move  
13 for a continuance in order to obtain those. Rule 26.2  
14 is pretty straightforward in indicating that --

15 THE COURT: Well, it might be as to her Grand  
16 Jury testimony, but we're only talking about the weight  
17 of the evidence as to her testimony at this point. So,  
18 I mean, I could review that if you want me to reset and  
19 review her testimony before we take this up again, but  
20 I don't think it's necessary.

21 MS. BELLINGER: Well, Your Honor, what I'm  
22 talking about is actually a rule -- Federal Rule of  
23 Criminal Procedure 46(j) indicates that at Detention  
24 Hearings, Rule 26.2 is in effect --

25 THE COURT: I understand that.

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1 MS. BELLINGER: -- which indicates that prior  
2 to cross-examining this witness, we would be entitled  
3 to review those reports --

4 THE COURT: If there's something pertinent to  
5 her testimony as to the weight of the evidence.

6 MS. BELLINGER: Yes, Your Honor, and she just  
7 indicated that she cannot recall --

8 THE COURT: Well, she just testified as to two  
9 people she talked to: The plant manager, and who was  
10 the other person?

11 MS. LEHNERT: Engineer.

12 THE COURT: And the engineer.

13 MS. BELLINGER: And based on that testimony,  
14 Your Honor, we would --

15 THE COURT: We'll take a recess. I want to  
16 see the Grand Jury testimony and we'll take this up  
17 again tomorrow at 3:00. Thank you so much.

18 MS. BELLINGER: Thank you.

19 THE COURT: Are you moving to admit these into  
20 evidence?

21 MS. LEHNERT: Yes.

22 THE COURT: Any objection to Government's 1,  
23 2, and 3?

24 MS. BELLINGER: No objection, Your Honor.

25 THE COURT: All right, Government's 1, 2, and

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3 will be admitted. And get the witness interviews, as well.

MS. LEHNERT: Yes, Your Honor.

THE COURT: And I'm not instructing you to review anything else, I'm just saying get the witness interviews and let me look at the Grand Jury testimony, if it's been transcribed.

MS. LEHNERT: That will be the one issue, Your Honor. I don't know that it has been.

THE COURT: Okay, if it hasn't been transcribed, then don't -- I'm not forcing you to do that, either. We'll take this up tomorrow at 3:00.

MS. BELLINGER: Your Honor?

THE COURT: Yes.

MS. BELLINGER: Would I be able to review those prior to returning at 3:00, assuming that --

THE COURT: Sure.

MS. BELLINGER: -- we would be resuming at 3:00?

THE COURT: If I get to see it before then, you can get to see it before then. Thank you.

MS. BELLINGER: Thank you, Your Honor.

THE COURT: But it may not be transcribed, so there you have it.

**[3:37 p.m. - Proceedings recessed]**

C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript of the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Gwen Reed

8-24-14